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 Jinju Zhang

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

JINJU ZHANG, an individual;

Plaintiff,

vs.

BENLIN YUAN, an individual; HONG LIN, an individual; CAMIWELL, INC., a California corporation; CAMIWELL, INC. (CANADA), a Canadian corporation; BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD., a Chinese corporation; ASIACOM AMERICAS, INC., a Virginia corporation; BANK OF AMERICA CORPORATION, a National Association; and DOES 1 to 20, inclusive,

Defendants.

AND RELATED CROSS-ACTIONS

Case No.: 3:23-cv-05818-CRB

DECLARATION OF DENNIS CHIN IN SUPPORT OF COUNTER-CLAIM DEFENDANT JINJU ZHANG'S MOTION TO DISMISS BENLIN YUAN'S AMENDED SHAREHOLDER DERIVATIVE COUNTERCLAIM FOR TURNOVER UNDER FRCP RULE 12(B)(6)

Date:

Time:

Judge: Hon. Vince Chhabria

Courtroom: 4 – 17th Floor

I, Dennis Chin, declare:

1. I am an attorney at law, duly licensed to practice and practicing in the State of California and the U.S. District Court for the Northern District of California..

DECLARATION OF DENNIS CHIN IN SUPPORT OF COUNTER-CLAIM DEFENDANT JINJU ZHANG'S MOTION TO DISMISS BENLIN YUAN'S AMENDED SHAREHOLDER DERIVATIVE COUNTERCLAIM FOR TURNOVER UNDER FRCP RULE 12(B)(6)

2. I am a Litigation Attorney at SAC Attorneys LLP, counsel for Plaintiff/Counter-Claim Defendant Jinju Zhang herein.

3. I am familiar with and have personal knowledge of the matters contained in this declaration and, if called upon, could and would competently testify thereto, except where I state that my knowledge is based upon information and belief, and as to those matters, I understand and believe them to be true.

4. I make this declaration in support of Plaintiff/Counter-Claim Defendant Jinju Zhang's Motion to Dismiss Benlin Yuan's Amended Shareholder Derivative Counterclaim for Turnover under FRCP Rule 12(b)(6).

5. On May 15, 2024, the Court dismissed Yuan's Counterclaim for Turnover against Zhang for lack of standing. Yuan alleged that Zhang possessed \$50,000 that belongs to Camiwell US. The Court stated that "if that money belongs to Camiwell US, then Yuan needed to bring a derivative claim to recover it on the company's behalf. . . . Yuan did not do that; he is instead demanding that Zhang turn over the money to him directly. Yuan will have leave to fix this pleading error." *See Exhibit A, a true and correct copy of the Order Regarding Motions to Dismiss Complaint and Motion to Dismiss Counterclaim filed on May 15, 2024, p. 3.*

6. Attached to the Request for Judicial Notice, **Exhibit A**, a true and correct copy of the Order Regarding Motions to Dismiss Complaint and Motion to Dismiss Counterclaim filed on May 15, 2024.

7. On May 24, 2024 in response to the Court's order, Yuan filed an Amended Shareholder Derivative Counterclaim for Turnover against Zhang.

8. Attached to the Request for Judicial Notice, **Exhibit B**, a true and correct copy of the Benlin Yuan's Amended Shareholder Derivative Counterclaim for Turnover filed on May 24, 2024.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California, and that this declaration was executed on June 6, 2024, at San Jose, California.


Dennis Chin

DECLARATION OF DENNIS CHIN IN SUPPORT OF COUNTER-CLAIM DEFENDANT JINJU ZHANG'S MOTION TO DISMISS BENLIN YUAN'S AMENDED SHAREHOLDER DERIVATIVE COUNTERCLAIM FOR TURNOVER UNDER FRCP RULE

12(B)(6)

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUNJI ZHANG,
Plaintiff,

v.

BELIN YUAN, et al.,
Defendants.

Case No. [23-cv-05818-VC](#)

**ORDER REGARDING MOTIONS TO
DISMISS COMPLAINT AND MOTION
TO DISMISS COUNTERCLAIM**

Re: Dkt. Nos. 19, 21, 23, 43

Yuan and Lin's motion to dismiss is partially granted—the claims against these defendants can move forward, but only to the extent that they are based on the alleged 2023 withdrawals. The Asiacom companies' motions to dismiss are granted with leave to amend. Zhang's motion to dismiss Yuan's counterclaim is also granted with leave to amend. This ruling assumes that the reader is familiar with the facts, the applicable legal standard, and the arguments made by the parties.

1. Zhang vaguely alleges that Yuan and Lin diverted Camiwell US's business in 2018 and 2019. The claims against Yuan and Lin based on these allegations are barred because of claim preclusion. In an earlier lawsuit, Zhang already alleged that Yuan and Lin had been trying to drive Camiwell US out of business by siphoning its assets and business in 2018 and 2019. That is the same misconduct and injury alleged here. Because judgment was entered in the first lawsuit, Zhang is now barred from reasserting the same cause of action in this one. *See Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 797–98 (2010). The fact that Zhang's new complaint provides additional factual context for the same claim does not defeat claim preclusion. *See*

Atwell v. City of Rohnert Park, 27 Cal. App. 5th 692, 699 (2018).

2. Zhang also alleges that Yuan and Lin continued to misappropriate Camiwell US's assets in 2023, even after judgment was entered in the state-court litigation. The claims against Yuan and Lin based on these allegations can move forward. There was some confusion in the papers about whether the judgment in the state-court action meant that Zhang was no longer a Camiwell US shareholder, thereby preventing him from bringing a derivative claim on the company's behalf. But at the hearing, counsel for Yuan and Lin conceded that Zhang remains a shareholder, which resolves the standing concern.

3. The claims against the Asiacom companies are dismissed for a host of reasons. There is no personal jurisdiction over Beijing Asiacom, at least on this record. There is no general jurisdiction, because Zhang hasn't shown that the Asiacom companies should be treated as alter egos. *See Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070–75 (9th Cir. 2015).¹ There is no specific jurisdiction either. Zhang hasn't alleged any meaningful connection between Beijing Asiacom and California—the fact that Camiwell US happens to be a California corporation is not enough. *See Picot v. Weston*, 780 F.3d 1206, 1215 (9th Cir. 2015). Nor has Zhang established the sort of agency relationship that would make Yuan's suit-related contacts with California attributable to Beijing Asiacom. *See Diaz v. One Technologies, LLC*, No. 22-55190, 2023 WL 6633842, at *1 (9th Cir. Oct. 12, 2023).

In any event, Zhang hasn't adequately stated a claim for relief against the Asiacom companies. His only claims are for conversion, based on the alleged diversion of business in 2018 and 2019. But these claims are time barred. Zhang alleges that the conversion happened in 2018 and 2019. And the complaint makes clear that Zhang discovered the relevant facts—the transfer of Camiwell US's business to the Asiacom companies—by July 2020 at the latest, when he filed his state-court action. But Zhang did not file this case until November 2023. So under

¹ For similar reasons, Zhang has not shown why it was appropriate to serve Beijing Asiacom through its domestic subsidiary. *See United States ex rel. Miller v. Public Warehousing Co. KSC*, 636 F. App'x 947, 949 (9th Cir. 2016).

the three-year limitations period for conversion claims, his lawsuit is untimely. *See AmerUS Life Insurance Co. v. Bank of America, N.A.*, 143 Cal. App. 4th 631, 639 (2006). Timeliness aside, Zhang's theory of conversion does not work. There is no reason to think that Camiwell US had a vested ownership interest in any of the business opportunities it allegedly lost. *See Lee v. Luxottica Retail North America, Inc.*, 65 Cal. App. 5th 793, 803 (2021). So the conversion tort does not apply. *See Voris v. Lampert*, 7 Cal. 5th 1141, 1150–51 (2019). Indeed, it's hard to see how the Asiacom companies could ever be liable simply for not doing business with Camiwell US. *See Lee*, 65 Cal. App. 5th at 803. But, in an abundance of caution, dismissal is with leave to amend.

4. Yuan's counterclaim is dismissed for lack of standing. Yuan alleges that Zhang possesses \$50,000 that belongs to Camiwell US. But if that money belongs to Camiwell US, then Yuan needed to bring a derivative claim to recover it on the company's behalf. *Meland v. Weber*, 2 F.4th 838, 847–48 (9th Cir. 2021); *Schrage v. Schrage*, 69 Cal. App. 5th 126, 149–50 (2021). Yuan did not do that; he is instead demanding that Zhang turn over the money to him directly. Yuan will have leave to fix this pleading error.

* * *

Any amended pleading is due within 14 days of this order. If an amended pleading is filed, any response is due within 14 days after the amended pleading is filed. Discovery can move forward immediately on the claims against Yuan and Lin regarding the alleged misappropriations following entry of the state-court judgment.

IT IS SO ORDERED.

Dated: May 15, 2024



VINCE CHHABRIA
United States District Judge

EXHIBIT B

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8 Attorneys For Defendant
 9 and Counter-claimant
 Benlin Yuan
 10
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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA--SAN FRANCISCO DIVISION

14	JINJU ZHANG, an individual;)	No. 3:23-CV-5818-VC
)	
15	Plaintiff,)	
)	AMENDED SHAREHOLDER DERIVATIVE
16	v.)	COUNTERCLAIM FOR TURNOVER
)	
17	BELIN YUAN, an individual;)	
	HONG LIN, an individual;)	
18	CAMIWELL, INC., a California)	
	corporation; CAMIWELL, INC.)	
19	(CANADA), a Canadian)	
	corporation; BEJING ASIACOM)	
20	TECHNOLOGY CO., LTD., a)	
	Chinese corporation; ASIACOM)	
21	AMERICAS, INC., a Virginia)	
	corporation; BANK OF AMERICA)	
22	CORPORATION, a National)	
	Association; and DOES 1 to)	
23	20, inclusive,)	
)	
24	Defendants.)	
)	
25	<hr/>)	
	BENLIN YUAN,)	
26)	
	Counter-claimant,)	
27)	
	v.)	
28)	
	JINJU ZHANG,)	

1 Counter-claim defendant.)
2)

3 Counter-claimant Benlin Yuan alleges as follows:

4 1. Plaintiff and Counter-claim Defendant JINJU ZHANG is an
5 individual residing in Ferndale, Washington.

6 2. Defendant and Counter-claimant BELIN YUAN ("Yuan") is an
7 individual residing in Mississauga, Ontario, Canada.

8 3. Defendant Camiwell, Inc. ("Camiwell") is a California
9 corporation previously conducting business in Santa Clara County,
10 California.

11 4. At all times relevant, Yuan was the 40% shareholder of
12 Camiwell with his wife Hong Lin and Zhang owning the remaining
13 60%.

14 5. Yuan brings this claim for relief for the benefit of
15 Camiwell for an order compelling Zhang to turnover to Camiwell
16 the \$50,000 derivative recovery described below that he obtained
17 for the Camiwell as set forth below.

18 6. In or around 2019, Camiwell ceased conducting business,
19 has conducted no business since then, and has no plans or ability
20 to conduct any business in the future.

21 7. In or around 2020, Yuan and Lin began initiation of
22 Camiwell's dissolution with final distributions to shareholders.

23 8. In response, Zhang accused Yuan and Lin of diverting
24 assets and business opportunities from Camiwell to other entities
25 to their benefit and at Zhang's expense.

26 9. On July 20, 2020, Zhang filed in the Santa Clara
27 Superior Court (Case No.20CV368535) his "COMPLAINT FOR DIRECT AND
28 DERIVATIVE CLAIMS FOR: 1. Breach of Fiduciary Duty, 2. Unfair
Competition, 3. Violation of Corporations Code §§ 1601 and 1602,

1 4. Accounting" naming Yuan, Lin and Camiwell, Inc. as defendants
2 (the "State Court Case").

3 10. The parties and their counsel subsequently litigated
4 the State Court Case with parties obtaining discovery from each
5 other. In August 2023, a few days before the scheduled jury
6 trial, defendants Yuan and Lin tendered a Code of Civil Procedure
7 § 998 offer to compromise to Zhang. Defendant Camiwell also
8 concurrently tendered its own separate and independent Code of
9 Civil Procedure § 998 offer to compromise to Zhang.

10 11. Zhang accepted both offers and Yuan/Lin tendered
11 \$50,000 and Camiwell tendered \$353,000 to Zhang in satisfaction
12 of the judgments to be entered, which Zhang accepted.

13 12. Being informed of Zhang's acceptances, Yuan requested
14 the preparation of the documents for Camiwell's dissolution,
15 which were forwarded the Zhang's attorneys.

16 13. On September 25, 2023, Zhang filed his "AMENDED NOTICE
17 OF ACCEPTANCE BY PLAINTIFF JINJU ZHANG OF DEFENDANT CAMIWELL
18 INC.'S C.C.P. SECTION 998 OFFER TO COMPROMISE" in the State Court
19 Case (the "Camiwell Acceptance").

20 14. On September 25, 2023, Zhang filed his "AMENDED NOTICE
21 OF ACCEPTANCE BY PLAINTIFF JINJU ZHANG OF DEFENDANTS BENLIN YUAN
22 AND HONG LIN'S C.C.P. SECTION 998 OFFER TO COMPROMISE" in the
23 State Court Case (the "Yuan/Lin Acceptance").

24 15. As of the date of this Counter-claim, proposed forms of
25 judgment that were lodged by Zhang with the Superior Court on
26 January 18, 2024 are awaiting signature by the judge presiding
27 over the State Court Case.

28 16. The \$353,000 payment by Camiwell to Zhang represented

1 100% of his personal shareholder distribution upon dissolution of
2 Camiwell.

3 17. The \$50,000 payment by Yuan/Lin was paid to Zhang in as
4 a derivative recovery of Camiwell.

5 18. After his acceptance of the \$353,000, Zhang refused to
6 sign the corporate dissolution papers and has retained the
7 \$50,000 derivative recovery for himself and denies that it
8 belongs to Camiwell claiming it as his own personal recovery.

9 Wherefore Counter-claimant Yuan prays for judgment in his
10 favor and against Zhang as follows:

11 1) that Zhang be ordered to turnover to Yuan the \$50,000
12 recovery that he obtained for Camiwell, Inc. in the State Court
13 Case; and

14 2) for such other and further relief as the Court may deem
15 just and proper.

16 Respectfully submitted,

17
18 Dated: 5/24/2024

/s/ John Chu

John Chu

19 Attorneys For Defendant and
20 Counter-claimant Benlin Yuan

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